IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 580 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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ASHOK @ JP @ JAYPRAKASH MAHADEV MISHRA - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR BHUNESH C RUPERA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 07/02/2006

ORAL JUDGMENT

1.Ashok @ J.P. @ Jayprakash Mahadev Mishra (detenu), through his wife's aunt Ramilaben P. Makavana, petitioner has filed habeas corpus petition under

Article 226 of the Constitution of India for quashing and setting aside the order of detention dated 26/9/2005 passed by the Commissioner of Police, Ahmedabad, detaining authority, under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (for short PASA Act).

2. Petition has been filed on 11/1/2006. When the matter was placed before the Court on 16/1/2006, this Court (Coram:K.M.Mehta, J.) has issued rule which was returnable on 1/2/2006. Pursuant to the Rule, Mr.L.R.Pujari appears on behalf of respondents. He has filed affidavit in reply of Mr.K.R.Kaushik. So, with consent of parties, matter is taken up for final hearing before this Court.

3. Mr.Kamlesh Kachhwah, learned advocate appeared on behalf of Mr.B.C.Rupera, learned advocate for the petitioner. The learned advocate for the petitioner has invited my attention to the detention order dated 26/9/2005. He has also invited my attention to the order of committal dated 26/9/2005 by which the detenu was sent to Junagadh jail. The learned advocate for the petitioner has also invited my attention to the grounds supplied by the authority dated 26/9/2005.

After inviting my attention to the grounds, he has stated that offences are committed under Section 380 of the IPC i.e. for Theft in dwelling house, etc., Section 454 of IPC i.e. for Lurking house-trespass of house-breaking in order to commit offence punishable with imprisonment, Section 457 of IPC i.e. for Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment read with Section 114 of IPC. He has also stated that grounds of detention reveals four offences which are as under:

3.1) Offence was registered at Maninagar Police Station in connection with criminal case no.414 of 2003 under Section 380, 454, 457 and 114 of IPC on 4/11/2003. It is alleged that detenu has damaged to one Phillips Colour T.V. Valued at Rs.14,000/-, wrist watch of citizen company valued at Rs.1,000/- and one silver coted set valued at Rs.500/- for which he has paid compensation of Rs.14,000/-.

3.2) Offence was registered at Maninagar Police Station in connection with criminal case no.429 of 2003 under Section 454 and 380 of IPC on 10/11/2003. It is alleged that detenu has damaged to one Videocon Colour T.V. Valued at Rs.5,000/- and gold and sliver ornaments

valued at Rs.4,375/- for which he has paid compensation of Rs.5,000/-.

3.3) Offence was registered at Maninagar Police Station in connection with criminal case no.431 of 2003 under Section 380, 454 and 114 of IPC on 12/11/2003. It is alleged that detenu has damaged to one Colour T.V. Of Crown company valued at Rs.10,000/- for which he has paid compensation of Rs.10,000/-.

3.4) Offence was registered at Naroda Police Station in connection with criminal case no.154 of 2005 under Section 380, 454, 457 and 114 of IPC on 6/4/2005. It is alleged that detenu has damaged to gold and silver ornaments valued at Rs.94,500/-.

4. It is also alleged that petitioner is 'dangerous person' within the meaning of Section 2(c) of the PASA Act. Two statements of anonymous witnesses under Section 9(2) of the Act were also recorded in this behalf.

5. Mr.Kachhwah, learned advocate for the petitioner has stated that if all these grounds taken together which has been alleged that detenu has committed theft, will

not violate the public order, at the most violation of law and order situation and therefore, the provisions of PASA Act will not be applicable to the facts and circumstances of the case. For the same, the learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of Piyush Kantilal Mehta v. Commissioner of Police, reported in AIR 1989 SC 491, judgment of the Hon'ble Apex Court in the case of Mustakmiya Jabbarmiya Shaikh, reported in 1995 (2) GLR 1268, judgment of the Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J) in Letters Patent Appeal No.223 of 2000 in Special Civil Application No.554 of 2000 in the case of Ashok Balabhai Patel and another judgment of the Division Bench of this Court (Coram: C.K.Thakkar, Acting C.J. and K.M.Mehta, J.) in the case of Ashokbhai Jivrajbhai v. Police Commissioner, reported in 2000 (1) GLR 816. He has also relied upon judgment of this Court (Coram:K.M.Mehta, J.) dated 15/11/2005 in the case of Rajubhai Pratapbhai Panpatil v. Commissioner of Police in Special Civil Application No.20420 of 2005.

6. On the other hand Mr.L.R.Pujari, learned advocate has invited my attention to the affidavit filed by K.R.Kaushik. In the affidavit, it is stated on receipt

of the proposal along with the materials from the sponsoring authority for detention of the detenu, I have carefully scrutinized, examined and considered all those materials and also personally verified the genuineness, correctness and veracity of the incidents narrated in the statements of witnesses in the unregistered cases by calling the said witnesses to my office and I found the said facts to be genuine and believable. Therefore, detention of the detenu on the basis of the grounds of detention is correct, proper and according to law.

7.I have considered all the facts and circumstances of the case. I have also considered the various judgments of the Hon'ble Supreme Court as well as Division Bench of this Court. In my view the authority has not properly arrived at the subjective satisfaction on the basis of grounds of detention for which I have already made reference. If all the offences are taken together, there is only violation of law and order but not public order. The contentions of the petitioner are squarely covered by the decisions of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra), judgment in the case of Mustakmiya (supra), Division bench Judgment of this Court (Coram: M.R.Calla

and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. no.554 of 2000 in case of Ashok Balabhai Makwana (supra) and another judgment of this Court (Coram: C.K.Thakkar, Acting C.J. and K.M.Mehta, J.) in the case of Ashokbhai Jivrajbhai (supra). And therefore, the order of detention is required to be quashed and set aside.

8. In view of the same, detention order dated 26/9/2005 passed by the Police Commissioner, Ahmedabad is quashed and set aside. Ashok @ J.P. @ Jayprakash Mishra, detenu is ordered to be set at liberty if not required in any other case. The petition is allowed. Direct service is permitted with no order as to cost. Rule made absolute.

(K.M.MEHTA, J.)

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